

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BARBARA YVONNE HAYES,

Plaintiff,

v.

ORDER
06-CV-528S

WILLIAMSVILLE CENTRAL SCHOOL DISTRICT,
NEW YORK STATE EDUCATION DEPARTMENT,
PEOPLE INCORPORATED, and UNITED STATES
DEPARTMENT OF HEALTH AND HUMAN
SERVICES OFFICE FOR CIVIL RIGHTS REGION II,

Defendants.

1. Presently pending before this Court are several pre-discovery motions related to the sufficiency of Plaintiff's Second Amended Complaint, as well as numerous motions filed by Plaintiff seeking a variety of forms of relief. In an effort to bring some order and structure to this proceeding, the motions are discussed and resolved below.

2. Pro Se Plaintiff Barbara Yvonne Hayes instituted this action on August 7, 2006, challenging Defendants' actions relating to her son's education and alleging violations of numerous statutes, including principally, the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq. Defendants challenged the sufficiency of Plaintiff's Complaint, which ultimately resulted in a Memorandum and Order issued by the Hon. John T. Elfvin, directing Plaintiff to file a Second Amended Complaint.¹ (Docket No. 28.) Although Plaintiff's first attempt to comply with Judge Elfvin's Memorandum and

¹This case was initially assigned to the Hon. John T. Elfvin, Senior United States District Judge, but was reassigned to this Court on October 17, 2007, after Judge Elfvin retired from the bench. (Docket No. 47.)

Order fell short (see Docket Nos. 38, 43), she eventually filed a Second Amended Complaint on March 7, 2008.

3. Defendants have responded to Plaintiff's Second Amended Complaint in a variety of ways. Defendant Williamsville Central School District ("the school district") filed a Motion to Dismiss (Docket No. 73); Defendant People Incorporated filed an Answer (Docket No. 79) and Amended Answer (Docket No. 91); Defendant United States Department of Health and Human Services Office for Civil Rights Region II ("U.S. Dept. of HHS") filed a Motion to Dismiss and/or for Summary Judgment (Docket No. 86); and Defendant New York State Education Department ("the state education department") filed a Motion for Summary Judgment (Docket No. 129). No discovery has yet taken place.

4. The pre-discovery motions filed by the school district² and the U.S. Dept. of HHS³ are fully briefed and currently under consideration by this Court.

5. The state education department filed its Motion for Summary Judgment on January 15, 2009. Plaintiff filed four motions in response. First, she filed a Motion to Strike on the principal ground that she was not served with Exhibits A and B to the Declaration of David J. State. (Docket No. 132.) Second, Plaintiff filed a Motion for Extension of Time to respond to the motion. (Docket No. 133.) Third, Plaintiff filed a Motion to Seal Exhibits A and B in their entirety. (Docket No. 134.) Fourth, she filed a Motion to Supplement her Motion to Strike (Docket 135), wherein she advises that she received hard copies of Exhibits A and B on January 22, 2009. (Docket No. 135, p. 2.) Fifth, Plaintiff filed a Motion to Continue Disposition of the pending Motions for Summary Judgment⁴ (Docket No. 137).

²Briefing on the school district's motion is at docket numbers 73–76, 85, 100 (99), 107, and 111.

³Briefing on the U.S. Dept. of HHS's motion is at docket numbers 86–90, 102–105, 106, and 113.

⁴This motion is also directed at the Motion for Summary Judgment filed by U.S. Dept. of HSS.

6. As it relates to Plaintiff's Motions to Strike, Seal, and Supplement, this Court finds that they should be denied. The Motion to Strike is denied in light of the Plaintiff's receipt of Exhibits A and B and the unpersuasiveness of her other asserted grounds to strike, which include the manner in which the state education department filed the required pro se litigant notice. Plaintiff's Motion to Seal Exhibits A and B to the Declaration of David J. State will be denied without prejudice because she has not identified the particular portions of the exhibits that require sealing. Plaintiff is instructed that before filing another motion to seal, she should first contact Attorney State and seek his agreement on those portions of the exhibits that, in her view, require sealing. The Motion to Supplement is denied as moot in light of this Court's finding that there is no basis to strike the state education department's Motion for Summary Judgment.

7. As it relates to Plaintiff's Motions for Extension of Time and to Continue Disposition of the Motions for Summary Judgment, these motions will also be denied. This Court will set a briefing schedule on the state education department's motion, thereby rendering Plaintiff's Motion for Extension of Time moot. The Motion to Continue Disposition of the Motions for Summary Judgment, which is based on Rule 56(f) and requests that the motions not be resolved "to permit discovery to be had," is denied on the basis that Plaintiff has not demonstrated, by affidavit, specific reasons that she cannot respond to the motions. See Federal Rule of Civil Procedure 56(f).

8. Finally, Plaintiff has filed a number of evidentiary-related motions and motions to amend her Complaint that this Court finds are premature at this point. As to the evidentiary-related motions, Plaintiff first moves for an Order directing the school district to file the administrative record in this case. (Docket No. 110.) That motion is denied as

moot in light of Plaintiff's subsequent motion for an Order directing the state education department, as custodian of the records, to file the administrative record. Plaintiff's motion for an order directing the state education department to file the administrative record is denied as premature at this time due to the pendency of the motions challenging the sufficiency of Plaintiff's Second Amended Complaint. Plaintiff may seek this relief again, if necessary, after those motions are resolved. The last of Plaintiff's evidentiary-related motions is her Motion for Leave to Supplement the record with further evidence. (Docket No. 116.) This motion is also denied as premature because there is not yet an evidentiary record to be supplemented. No discovery has taken place and the administrative record has not been filed.

9. As to Plaintiff's three Motions to Amend her Complaint (Docket Nos. 123, 125, 127), they are denied as premature. The proposed amendments include new allegations and additional parties; they do not, as this Court understands them, seek to rectify the deficiencies alleged by the moving defendants in their respective motions. Accordingly, at this time, this Court finds that the most expeditious course is to deny Plaintiff's motions without prejudice as premature until the currently-pending dispositive motions are resolved. Plaintiff's motions are therefore denied as premature.

10. The parties are strongly encouraged to refrain from filing any additional motions until such time as this Court resolves the threshold issues raised in the pending dispositive motions (Docket Nos. 73, 86, 129).

IT HEREBY IS ORDERED, that Plaintiff's Motion to Strike (Docket No. 132) is DENIED.

FURTHER, that Plaintiff's Motion to Seal (Docket No. 134) is DENIED without prejudice.

FURTHER, that Plaintiff's Motion to Supplement (Docket No. 135) is DENIED as moot.

FURTHER, that Plaintiff's Motion for Extension of Time (Docket No. 133) is DENIED as moot.

FURTHER, that Plaintiff's Motion to Continue Disposition of the Motions for Summary Judgment (Docket No. 137) is DENIED.

FURTHER, that Plaintiff shall file a response to Defendant State Education Department's Motion for Summary Judgment (Docket No. 129) by March 31, 2009. Defendant State Education Department may file a reply by April 14, 2009. The motion will be taken under advisement without oral argument.

FURTHER, that Plaintiff's Motion for Defendant Williamsville Central School District to File the Administrative Record (Docket No. 110) is DENIED as moot.

FURTHER, that Plaintiff's Motion for Defendant New York State Education Department to File the Administrative Record (Docket No. 117) is DENIED without prejudice as premature.

FURTHER, that Plaintiff's Motion to Supplement the Record (Docket No. 116) is DENIED without prejudice as premature.

FURTHER, that Plaintiff's Motions to Amend or Supplement the Second Amended Complaint (Docket Nos. 123, 125, 127) are DENIED without prejudice as premature.

FURTHER, that the parties are strongly encouraged to refrain from filing any additional motions until such time as this Court resolves the threshold issues raised in the pending dispositive motions

SO ORDERED.

Dated: February 16, 2009
Buffalo, New York

s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge